

QUINN EMANUEL URQUHART & SULLIVAN, LLP

Kevin Y. Teruya (Bar No. 235916)

kevinteruya@quinnemanuel.com

Adam B. Wolfson (Bar No. 262125)

adamwolfson@quinnemanuel.com

Claire D. Hausman (Bar No. 282091)

clairehausman@quinnemanuel.com

Brantley I. Pepperman (Bar No. 322057)

brantleypepperman@quinnemanuel.com

865 South Figueroa Street, 10th Floor

Los Angeles, CA 90017-2543

(213) 443-3000

Manisha M. Sheth (admitted *pro hac vice*)

manishasheth@quinnemanuel.com

51 Madison Avenue, 22nd Floor

New York, New York 10010

(212) 849-7000

Michelle Schmit (admitted *pro hac vice*)

michelleschmit@quinnemanuel.com

191 N. Wacker Drive, Suite 2700

Chicago, IL 60606

Telephone: (312) 705-7400

*Attorneys for Plaintiffs Maximilian Klein
and Sarah Grabert*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

MAXIMILIAN KLEIN, et al.,

Plaintiffs,

vs.

META PLATFORMS, INC.,

Defendant.

This Document Relates To: All Actions

Case No. 3:20-cv-08570-JD

Hon. James Donato

**APPLICATION TO APPOINT KEVIN Y.
TERUYA OF QUINN EMANUEL
URQUHART & SULLIVAN, LLP AS
INTERIM LEAD COUNSEL FOR THE
CONSUMER CLASS**

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PRELIMINARY STATEMENT

Following the recent status conference, Kevin Teruya and the Quinn Emanuel Urquhart & Sullivan, LLP (“QE”) team once again proposed to Hagens Berman Sobol Shapiro LLP (“HB”), and Lockridge Grindal Nauen P.L.L.P. (“LGN”), that the firms work cooperatively together under the co-leadership of Mr. Teruya and Ms. Scarlett. They refused, insisting that Ms. Scarlett be appointed sole lead of this class action, regardless of whether that was in the Consumer Class’s best interests. It is for that reason that Mr. Teruya applies for sole (rather than co-) leadership here, even though his and QE’s preference has always been to simply continue leading the case with their appointed-co-counsel.

Mr. Teruya is the architect of the Consumer Class’s case. He identified the core damages and liabilities theories; he developed and led drafting of the first-filed complaint, which HB and LGN copied almost wholesale; he led drafting on the Class’s briefs in opposition to Facebook’s motion to dismiss and helped craft the successful oral argument on the same; he has personally pushed discovery forward at every step and led discussions with Advertiser and Facebook counsel. There is no other attorney more knowledgeable about the Class’s claims, nor as dedicated to vindicating their rights.

The objective facts back this up. Through December 2022, Mr. Teruya alone had worked nearly 2,650 hours on this case, more than 3.25 times the amount of hours Ms. Scarlett and Mr. Clark have billed, combined. The QE team, which (including Mr. Teruya) has collectively obtained over **\$30 billion** for plaintiffs, also accounts for nearly half of all hours worked by QE, HB, and LGN. QE cares deeply about the Class and this case, and has demonstrated that care by action. By appointing Mr. Teruya as Interim Lead Consumer Class Counsel, supported by the QE team discussed below, this Court will ensure the Class continues to receive the very best representation available.

Mr. Teruya’s appointment will also strongly promote diversity by addressing the problems of “repeat players” and dramatic underrepresentation of Asian Americans in class leadership. Despite 25 years of practice in high stakes antitrust and unfair competition litigation where he had played lead roles, this would be Mr. Teruya’s first individual court appointment as lead class counsel. As lead counsel, Mr. Teruya and the QE team—which is a mix of male and females attorneys, and attorneys with diverse backgrounds—will continue to work respectfully and cooperatively with counsel of all backgrounds to efficiently and successfully resolve this litigation, as they have done to date.

1 Finally, Mr. Teruya is committed to maximizing efficiencies and implementing fee, time, and
 2 cost controls so the Court will have clear and definitive records at the end of this case. Moreover, QE
 3 has uniquely deep financial and attorney resources to take this case through trial or appeal—resources
 4 it has been more than willing to devote to this case.

5 For these reasons, the Court should appoint Mr. Teruya as Interim Lead Consumer Class
 6 Counsel, so he and the QE team can continue to build upon the case he originated and their more than
 7 two years of successful work for the Consumer Class.

8 **ARGUMENT**

9 **I. EACH RULE 23(G) FACTOR STRONGLY SUPPORTS APPOINTING MR. TERUYA** 10 **TO LEAD LITIGATION ON THE CLAIMS HE DEVELOPED FOR THE** 11 **CONSUMER CLASS**

12 **A. Mr. Teruya and QE Developed the Consumer Class’s Claims**

13 On December 3, 2020, QE and Keller Postman (then known as Keller Lenkner) filed the very
 14 first of these now-consolidated cases. Mr. Teruya was one of the attorneys who signed on to that
 15 complaint, but the reality is he began working on the claims in early 2019, when he personally met
 16 with industry expert Dina Srinivasan. *See* Declaration of Kevin Y. Teruya (“Teruya Decl.”) ¶ 5. This
 17 makes Mr. Teruya the first attorney to work on this case, which he did more than a year before anyone
 18 else. *Id.* ¶ 4. The difficulty, however, laid in how exactly to articulate the Consumers’ liability and
 19 damages theories—many had discussed the issue, but none figured out how to plausibly explain the
 20 issues. It was this problem that Mr. Teruya set himself to solve, which he finally did in late 2020.

21 The resulting complaint incorporated Mr. Teruya’s core theories. It explained clearly, for the
 22 first time, why *consumers* had cognizable antitrust claims to seek redress from Facebook. As to
 23 anticompetitive conduct, the complaint explained that Facebook has been able to obtain and maintain
 24 monopoly power by deceiving the market as to its data collection and use practices. As to damages,
 25 the complaint explained that Facebook’s ill-gotten monopoly power has allowed it to provide
 26 inadequate compensation—including monetary compensation—to consumers in return for their data.
 27 Importantly, the complaint also describes why these issues—including the anticompetitive conduct,
 28 the impact of that conduct on the Consumer Class, and the resulting damages—are all common ones
 affecting consumers across the country. These core theories that Mr. Teruya developed form the heart

1 of the Consolidated Consumer Complaint. They are also the theories that remain after Judge Koh
2 largely denied Facebook’s motion to dismiss, and which the Class is pursuing today.

3 Notably, the Federal Trade Commission and a coalition of State Attorneys General did not file
4 their own respective antitrust lawsuits against Facebook until December 9, 2020, *after* Mr. Teruya and
5 QE filed theirs on December 3, 2020. The public enforcement actions and the House Antitrust
6 Subcommittee’s October 2020 “Investigation of Competition in Digital Markets” report have focused
7 on Facebook’s anticompetitive acquisitions and “Platform” API policies, whereas Mr. Teruya’s and
8 QE’s original *Klein* complaint focused on Facebook’s anticompetitive deception as to Facebook’s data
9 practices. Moreover, as public enforcers, the FTC and State Attorneys General do not seek damages.
10 Consequently, their complaints do not feature the damages theory based on compensation for data Mr.
11 Teruya developed and which is present in his and QE’s original complaint. Put simply, the case Mr.
12 Teruya developed was no copycat action; it was the result of his dedication to articulating why and
13 how Facebook harmed hundreds of millions of consumers over several years. Teruya Decl. ¶¶ 3–12.

14 If imitation is the sincerest form of flattery, then HB and LGN’s original joint complaint is a
15 resounding endorsement of Mr. Teruya’s ability to serve as Interim Lead Consumer Class Counsel.
16 Those two firms filed a follow-on complaint that verbatim copied and pasted more than 60 pages of
17 QE’s complaint, including the core liability and damages theories Mr. Teruya articulated. Teruya
18 Decl. ¶ 14. This is immediately obvious because their complaint contains near-identical headings,
19 footnotes, and custom hyperlinks lifted from Mr. Teruya’s and QE’s original complaint. *See Id.* ¶¶ 14–
20 19; *cf. In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 181 (3d Cir. 2005) (“[C]opycat complaints do
21 not benefit the class, and are merely entrepreneurial efforts taken by firms attempting to secure lead
22 counsel status.”). Looking at this record, Judge Koh stated at the prior leadership hearing: “I do have
23 the impression that Quinn Emanuel and Keller Lenkner did the legwork, and I hear you about the Me,
24 Too, Complaint.” March 3, 2021 Hrg. Tr. at 54:5–7.

25 That Mr. Teruya is the single individual who has most advanced the class’s interests by
26 identifying the core theories and making them a reality is an extraordinarily compelling reason to
27 appoint him lead counsel under Rule 23(g)(1)(A)(i). *See, e.g., In re GSE Bonds Antitrust Litig.*, 377 F.
28 Supp. 3d 437, 438 (S.D.N.Y. 2019) (appointing first-to-file counsel that developed claims and whose

1 complaint was template for later firms); *Chacanaca v. Quaker Oats Co.*, 2011 WL 13141425, at *3
 2 (N.D. Cal. June 14, 2011) (appointing interim counsel because “makes sense” for them “to continue as
 3 counsel in a case that appears to be essentially the product of their work and design”).

4 **B. Mr. Teruya and QE Are and Have Been the Most Proactive Consumer Counsel**

5 Beyond originating Consumers’ claims, Mr. Teruya and QE have continued to put in an
 6 extraordinary amount of effort to push this case forward. This is clear from the substantive tasks they
 7 have undertaken since the Court’s appointment order, which include drafting the Consolidated
 8 Consumer Complaint; briefing, arguing, and largely defeating Facebook’s motion to dismiss; arguing
 9 every issue at every hearing in the case until the recent status conference, when HB and LGN
 10 contested Mr. Teruya’s substitution as co-lead counsel, where he split argument; continuing to
 11 develop the case, including drafting discovery requests and responses, identifying deponents, taking
 12 Consumers’ first deposition in the case yesterday and the second next Tuesday (which Mr. Teruya will
 13 take), working with multiple experts, and co-managing the document review process; leading
 14 discussions with Advertiser and Facebook counsel; and pushing fact and expert discovery forward.
 15 The docket also objectively confirms QE has filed the vast majority of Consumers’ submissions.

16 Mr. Teruya’s and QE’s substantive efforts are also clear from the numbers. Through December
 17 2022, Mr. Teruya worked over 2,650 hours on this case. That is more than 3.25 times the hours Ms.
 18 Scarlett and Mr. Clark worked through December 2022, *combined*. As a firm, QE has accounted for
 19 nearly *half* of all hours leadership put into the case through December 2022. The difference becomes
 20 even more stark when one filters out hours devoted to document review. Excluding document review
 21 hours (which, while important, are separate from the day-to-day tasks that push forward and develop
 22 Consumers’ claims), QE worked nearly 9,160 hours through December 2022; double the amount HB
 23 and LGN billed, combined. Thus, looking at hours worked on substantive tasks, Mr. Teruya
 24 individually has worked more hours than either HB *or* LGN, and the QE team has double their hours.

25 None of this is meant to minimize the work HB or LGN have put in to date. As Mr. Teruya
 26 stated in his motion to substitute and reiterated both at and after the recent status conference, he and
 27 QE were happy to work in essentially the same leadership structure as before. What these metrics help
 28 explain is who is actually *leading* the case and why appointing Mr. Teruya and the QE team behind

1 him to continue that leadership will best benefit and protect the Consumer Class moving forward.

2 **C. Mr. Teruya and QE Draw on Their Robust Antitrust / Class Action Experience**

3 Mr. Teruya has the significant background in antitrust and class action litigation necessary to
 4 successfully to continue leading the Consumer Class’s case. He is a Japanese-American partner in
 5 QE’s Los Angeles office, and a 1998 graduate of Harvard Law School. His practice focuses primarily
 6 on antitrust and unfair competition litigation. Mr. Teruya’s successful representation of both antitrust
 7 plaintiffs and defendants is well-recognized: he was named a “Top Antitrust Lawyer” in California by
 8 the Daily Journal in 2022, a “Super Lawyer” in antitrust by *Southern California Super Lawyer* for
 9 years, and one of the 500 leading plaintiff financial lawyers by *Lawdragon*. Teruya Decl. ¶ 27. Mr.
 10 Teruya has also served as an officer of the Executive Committee of the Antitrust & Unfair
 11 Competition Law Section of the State Bar of California, an officer of the Executive Committee of the
 12 Antitrust Section of the Los Angeles County Bar Association, and as a member of the editorial board
 13 for the “California Antitrust and Unfair Competition Law” treatise. *Id.* Originally from Hawaii, Mr.
 14 Teruya also previously served as a law clerk to the Honorable Herbert Y.C. Choy of the United States
 15 Court of Appeals for the Ninth Circuit (the first Asian American to serve as a federal judge). *Id.*

16 Mr. Teruya has extensive and impressive experience litigating high stakes antitrust cases, and
 17 he has been instrumental in obtaining eight- and nine-figure recoveries for plaintiffs. *See* Teruya Decl.
 18 ¶ 28. This includes substantial experience litigating antitrust claims against Facebook, including work
 19 on this case, but also the earlier *Social Ranger* antitrust case against Facebook (which resolved shortly
 20 before trial, after Mr. Teruya and QE successfully compelled the deposition of Mark Zuckerberg). In
 21 the *Polyurethane Foam Antitrust Litig.*, Mr. Teruya was a lead member of the team that represented a
 22 direct purchaser class pursuing price-fixing claims, obtained class certification, withstood multiple
 23 defense summary judgment motions, and obtained more than \$430 million in settlements. He also
 24 represented plaintiff Songkick in an antitrust action against Live Nation and Ticketmaster, obtaining
 25 \$110 million in public settlement payments shortly before trial, plus the confidential acquisition of its
 26 assets. Mr. Teruya has also represented antitrust opt-out plaintiffs, such as Fiat Chrysler in a billion-
 27 dollar antitrust action as part of the *In re Automotive Parts Antitrust* multidistrict litigation, which he
 28 litigated through discovery and resolved shortly before trial. Similarly, he represented homebuilders

1 seeking \$200 million (pre-trebling) in the *In re Domestic Drywall Antitrust* multidistrict litigation,
 2 which also resolved confidentially shortly before trial. On the defense side, Mr. Teruya was a lead
 3 member of the team that obtained a complete defense verdict for Micron Technology in an antitrust
 4 case where Rambus sought \$4 billion (pre-trebling) from Micron. Additional detail regarding Mr.
 5 Teruya’s experiences in these and other matters is included in his declaration. *See* Teruya Decl. ¶ 28.

6 Mr. Teruya is supported by other QE attorneys who also have significant experience litigating
 7 complex, landmark antitrust and class action cases. QE, the world’s largest law firm devoted solely to
 8 business litigation, has built its reputation on effectively litigating high-stakes cases against the most
 9 formidable adversaries, including Facebook. Teruya Decl. ¶ 35. Among other accolades, the firm has
 10 been named a “litigation powerhouse” by *The American Lawyer*, a “global force in litigation” by *The*
 11 *Wall Street Journal*, one of “The Four Firms that GCs Fear The Most” by BTI Consulting Group (for
 12 ten years running), a “Tier One” antitrust practice by *Benchmark Litigation*, “Antitrust Litigation
 13 Department of the Year” by *The Recorder*, and “Class Action Group of the Year” by *Law360*. *Id.*

14 These recognitions come with good reason—QE has a long string of victories on behalf of
 15 antitrust and class plaintiffs. These include, for example, recoveries of: \$3.7 billion for a certified class
 16 of health insurers in *Health Republic Ins. Co. v. United States*, Case No. 1:16-cv-00259 (Fed. Cl.);
 17 \$1.87 billion in *In re Credit Default Swaps Antitrust Litig.*, Case No. 13-md-02476 (S.D.N.Y.)
 18 (“CDS”); \$500 million in *ISDAfix Antitrust Litig.*, Case No. 14-cv-7126 (S.D.N.Y.); and \$430 million
 19 in *Polyurethane Foam Antitrust Litig.*, Case No. 10-md-02196 (N.D. Ohio). These and others of QE’s
 20 substantial victories for antitrust and class plaintiffs are described in greater detail in Mr. Teruya’s
 21 declaration accompanying this application. *See* Teruya Decl. ¶¶ 36, 38–39.

22 QE’s success in antitrust cases is not limited to just the plaintiff side of the “v.” QE has also
 23 achieved monumental successes on behalf of antitrust defendants. For example, QE (including Mr.
 24 Teruya, as a key team member) obtained a complete defense verdict for Micron Technology in an
 25 antitrust case where Rambus Inc. sought \$4 billion—trebled to \$12 billion—at trial. Teruya Decl. ¶
 26 41. Others of QE’s substantial victories for antitrust defendants are described in greater detail in Mr.
 27 Teruya’s declaration. *See Id.* ¶¶ 40–43. This “both sides of the v.” practice provides QE with unique
 28 insights, particularly in antitrust cases, and allows Mr. Teruya and his colleagues to maximize the

1 Consumers' chances and settlement opportunities in this case. Teruya Decl. ¶ 43.

2 For all these reasons, Mr. Teruya is positioned to draw on his and QE's unparalleled antitrust
3 and class action litigation practices to expeditiously and efficiently pursue claims on behalf of the
4 Consumer Class. *See* Fed. R. Civ. P. 23(g)(1)(A)(ii); Fed. R. Civ. P. 23(g)(1)(A)(iii).

5 **D. A Team Of Hyper-Qualified, Diverse QE Attorneys Supports Mr. Teruya**

6 For this case, Mr. Teruya has been and will be assisted by a strong, diverse team, including:

7 ***Manisha M. Sheth***—Ms. Sheth is a partner in QE's New York office and also serves as co-
8 chair of the firm's Government and Regulatory Litigation and Sexual Harassment and Employment
9 Discrimination practices. She is a seasoned trial lawyer with over 20 years of experience in both
10 private practice and as a former federal and state prosecutor. Teruya Decl. ¶ 29. Ms. Sheth and the
11 firm were recently appointed co-lead counsel in the aerospace no-poach litigation pending in the
12 District of Connecticut. Ms. Sheth served as the Executive Deputy Attorney General for the Economic
13 Justice Division at the Office of the New York Attorney General, where she supervised all complex
14 commercial investigations and civil enforcement actions involving antitrust, data security and privacy,
15 consumer frauds, securities, government fraud, and real estate finance. *Id.* In that role, she supervised
16 the Office of the New York Attorney General's Antitrust Bureau. *Id.*

17 Ms. Sheth has extensive experience representing plaintiffs, defendants, and public entities in a
18 wide range of complex commercial disputes and government investigations involving antitrust,
19 securities fraud, and other business frauds and torts. Teruya Decl. ¶ 29. Ms. Sheth has also represented
20 the Federal Housing Finance Agency in landmark litigation resulting in approximately \$23 billion in
21 recoveries, and recently obtained a \$1.84 billion settlement for Ambac Financial Group. *Id.* Ms. Sheth
22 also represented the State of New York in a number of antitrust settlements arising out of multiple
23 financial institutions' collusive setting of the London Interbank Offered Rate. *Id.* Among other
24 accolades, Ms. Sheth was named in *Crain's New York Business* "Notable Women in Law" list (2021);
25 Lawdragon's 500 Leading Plaintiff Financial Lawyers Guide in business litigation (2019–2020);
26 *Crain's New York Business* "40 under 40" list (2013); and The National Law Journal's "Minority 40
27 under 40" list (2011). *Id.* Ms. Sheth served as a law clerk to the Honorable William H. Pauley III of
28 the United States District Court for the Southern District of New York. *Id.*

1 **Adam B. Wolfson**—Mr. Wolfson is a partner in QE’s San Francisco and Los Angeles offices
 2 who represents both plaintiffs and defendants in antitrust, class action, and other litigation, and has
 3 obtained over \$8 billion in recoveries to date. Teruya Decl. ¶ 30. Mr. Wolfson was named an “MVP”
 4 in Class Actions by *Law360* in 2022 and a “Rising Star” in the same category in 2019. *Benchmark*
 5 *Litigation* recognized him as a 2023 Future Star, and he has been listed among the top 500 plaintiffs’
 6 financial lawyers in the nation by *Lawdragon* every year since 2019, as well as a Recommended
 7 Lawyer in Antitrust repeatedly by *Legal 500 USA*. *Id.* Mr. Wolfson currently serves on the Executive
 8 Committee in *In re 3M Combat Arms Earplug Products Liability Litig.*, Case No. 3:19-md-2885 (N.D.
 9 Fla.), a mass tort seeking compensation for over 250,000 former service members injured by defective
 10 earplugs 3M sold to the military. *Id.* ¶ 30. He recently tried three jury trials and one bench trial in 14
 11 months, winning each of his jury trials (and is currently in post-hearing briefing in his bench trial).

12 Mr. Wolfson has participated (and is participating) in lead roles in a number of other antitrust
 13 and competitor cases and class actions. *See* Teruya Decl. ¶ 30 (describing representative cases). As
 14 particularly relevant to Facebook, Mr. Wolfson was also the core associate in the Winklevoss twins’
 15 case against Facebook and Mark Zuckerberg, a dispute that settled confidentially and was later
 16 dramatized in the movie, *The Social Network*.

17 **Michelle Schmit**—Ms. Schmit is a partner in QE’s Chicago office. She regularly represents
 18 litigants in antitrust, class-action, and data privacy litigation. *See* Teruya Decl. ¶ 31. For example, she
 19 represented Qualcomm in multi-billion dollar antitrust litigation adverse to Apple. *Id.* Ms. Schmit also
 20 represented comScore in a data privacy class action lawsuit, in what was, at the time, reported to be
 21 the largest class ever certified under federal electronic privacy laws. *Id.* Ms. Schmit currently
 22 represents IQVIA, a pharmaceutical data company, in antitrust litigation in federal court. *Id.* Ms.
 23 Schmit has been ranked by *Best Lawyers in America* for Commercial Litigation for each of the past
 24 three years, and recognized by *Best Lawyers in America* as one to watch, “Women in the Law,” in
 25 2022. *Id.* She also argued many of the core early motions in this case. *Id.* ¶ 47.

26 **Claire D. Hausman**—Ms. Hausman, an of counsel in QE’s Los Angeles office, has
 27 represented multiple plaintiffs in complex antitrust litigations, including two MDLs. *See* Teruya Decl.
 28 ¶ 32. Ms. Hausman has litigated in MDLs and large consolidated state and federal actions throughout

her career, including in antitrust, structured finance, and products liability cases. Teruya Decl. ¶ 32. These representations include plaintiff ResCap Liquidating Trust in more than 50 lawsuits seeking to recovery indemnity and damages arising from lenders' sale of defective mortgage loans which resulted in recoveries of more than \$1.3 billion. *Id.* They also include a defendant pharmaceutical manufacturer in an MDL involving allegedly contaminated products in which summary judgment motions resulted in dismissal or favorable settlement of hundreds of claims. *Id.*

Brantley I. Pepperman—Mr. Pepperman is a fifth-year associate specializing in antitrust and unfair competition matters. He has litigated a number of other antitrust matters for both plaintiffs and defendants. *See* Teruya Decl. ¶ 33. Mr. Pepperman also has deep knowledge of the factual and legal issues in this case, having worked primarily on this litigation for more than two years, including prior to its filing. *Id.* Mr. Pepperman also previously served as a law clerk to the Honorable Christina A. Snyder of the United States District Court for the Central District of California. *Id.*

The team also includes associates: **Richard Jagdishwar Millett**, who clerked for this Court and the Honorable Milan D. Smith, Jr., of the United States Court of Appeals for the Ninth Circuit; **Andrew Mather**, who previously served as a software architect and data privacy analyst on transformative big data projects for a major Fortune 500 company; and **Krishna Shah**, who is currently pursuing Big Tech-related antitrust claims in this District. *See* Teruya Decl. ¶ 34. Additional QE attorneys standby ready, willing, and able to join the QE team in service to the Consumer Class.

E. QE Will Continue to Devote Unmatched Resources to the Consumer Class

QE has already committed substantial resources to this case. It will continue to bring them fully to bear on behalf of the Consumer Class. *See* Fed. R. Civ. P. 23(g)(1)(A)(iv).

Financial and attorney resources. As a full-service law firm, QE is well-capitalized and not beholden to contingent income. Over the last two years, the firm has already made significant financial contributions on the Consumer Class's behalf. QE has paid, and committed to pay, more than either HB or LGN towards expenses. QE will continue to deploy its unmatched financial resources should the Court appoint Mr. Teruya. And, as the world's largest law firm devoted solely to business litigation, QE has a deep bench to assist Mr. Teruya and the team in this case, should the need arise.

Litigation support services. QE can offer the Consumer Class unrivaled in-house litigation

1 services, direct attention, and battle-tested analytical tools. Such analytical tools have already allowed
 2 QE to effectively and efficiently cut through the massive volumes of documents produced in this case,
 3 saving the Class attorney time and money. Indeed, courts have appointed QE as interim co-lead class
 4 counsel in complex antitrust class actions (like this one) precisely because QE has the resources to
 5 “run massive discovery cases[.]” *In re CDS*, Case No. 13-md-2476 (S.D.N.Y.), Dkt. 244 at 37–38.

6 ***Trial resources.*** QE offers the Consumer Class a head start should this case go to trial. As
 7 another court noted when appointing QE as co-lead class counsel in a different case, QE boasts
 8 attorneys who are not just litigators but “trial lawyers who can actually go into court and try a case.”
 9 *CDS*, Dkt. 244 at 37–38. The partners *on this case* have successfully tried multiple antitrust cases to
 10 juries and judges, and they are versed on the issues *in this case* given QE’s substantial work to date.
 11 QE is stocked with additional, seasoned trial lawyers who are available to join the team, if needed.
 12 These capabilities will ensure that every decision as to what to do—and not do—is appropriately
 13 tailored to the specific question of how to get this case ready for trial without unnecessary delay, and
 14 will also encourage potentially quicker and greater settlement.

15 ***Appellate resources.*** Winning this case may require winning appeals. QE is home to one of the
 16 nation’s leading Ninth Circuit appellate practices, headed by name partner Kathleen Sullivan, one of
 17 the nation’s preeminent appellate advocates and Stanford Law School’s former Dean. QE’s appellate
 18 practice is also experienced in antitrust matters, and it has always worked hand-in glove with QE’s
 19 litigators to ensure that our theories are well-grounded in law and will withstand appellate scrutiny.

20 **II. APPOINTING MR. TERUYA WILL STRONGLY PROMOTE DIVERSITY**

21 As this Court has explained, promoting diversity in class leadership is important. *In re*
 22 *Robinhood Outage Litig.*, Case No. 3:20-cv-01626-JD (N.D. Cal.) (Donato, J.), Dkt. 59, at 3. This
 23 includes ensuring leadership “reflect[s] the diversity of the proposed national class” and avoiding the
 24 “‘repeat player’ problem in class counsel appointments that has burdened class action litigation and
 25 MDL proceedings.” *Id.* Appointing Mr. Teruya will serve both of these goals.

26 **A. Mr. Teruya Is a Diverse and Highly Qualified Attorney, Whose Appointment** 27 **Would Also Avoid the “Repeat Player” Problem**

28 As described *supra* at Section I(C), Mr. Teruya is a well-qualified attorney with 25 years of

1 successful antitrust experience at the highest levels. And although he has served as lead lawyer in
 2 other contexts and played a key role in supporting other court-appointed lead class counsel, this would
 3 be Mr. Teruya's first individual court appointment as lead class counsel. Mr. Teruya's appointment
 4 would thus address the "repeat player" problem this Court has identified. *Robinhood*, Dkt. 59 at 3. QE
 5 fully supports Mr. Teruya. This includes the many QE partners that have served in scores of appointed
 6 leadership roles in class actions, such as team members Ms. Sheth and Mr. Wolfson.

7 Importantly, Mr. Teruya's appointment would also promote the appointment of a dramatically
 8 underrepresented ethnic group, Asian Americans, in class leadership positions. An influential 2017
 9 study authored by California Supreme Court Justice Goodwin H. Liu and others, and released by the
 10 National Asian Pacific American Bar Association and Yale Law School, found that Asian Americans
 11 "are significantly underrepresented in the leadership ranks" in the legal profession. Teruya Decl. ¶ 45;
 12 Ex. A. Just last year in 2022, an updated version of the study concluded, "Underrepresentation of
 13 Asian Americans in the top ranks of the legal profession persists." Teruya Decl. ¶ 45; Ex. A.

14 Unfortunately, this underrepresentation also persists in the context of leadership appointments.
 15 Despite constituting nearly 16% of the population in California, Asian American representation in
 16 class counsel leadership positions is scarce. Teruya Decl. ¶ 45. A 2020 study by Law.com concluded
 17 that, between 2016 and 2019, less than 9% (and perhaps even as low as 5%) of appointments in MDLs
 18 went to non-White attorneys. *Id.*; see also Ex. B. As one of several ethnic groups that make up the
 19 non-White population, Asian Americans necessarily reflect a fraction of those already-small number
 20 of appointments. Mr. Teruya's appointment would thus serve the Consumer Class not only by
 21 providing the Class the architect of their claims as lead counsel, but also by helping address the
 22 problem of underrepresentation of Asian Americans in class counsel leadership positions.

23 **B. Mr. Teruya and QE Are Committed to Diversity and Mentorship**

24 Mr. Teruya and QE firmly believe that the best ideas come from teams composed of
 25 individuals with different backgrounds who can contribute diverse perspectives. Indeed, the QE team
 26 in this case includes members of different genders, ages, racial and ethnic identities, and life
 27 experiences whose diversity of experience and perspective will benefit the Consumer Class. QE's
 28 commitment to diversity is also well-recognized: *The American Lawyer* has repeatedly named the firm

1 as one of the “Top Firms for Diversity” and has ranked the firm near the top 10 percent in its annual
 2 diversity survey among the AmLaw 200 firms. The Human Rights Campaign Foundation has also
 3 awarded the firm a score of 100 percent on its Corporate Equality Index, naming the firm a “Best
 4 Place to Work for LGBTQ Equality.” QE is also the largest U.S. law firm with a female name partner,
 5 and many of its practice groups and its branch offices are headed by women and other diverse
 6 attorneys. *See* Declaration of Kathleen M. Sullivan (“Sullivan Decl.”) ¶ 4. Many QE female partners
 7 have been named to *Law360*’s “Top Female Trial Attorneys,” *The Recorder*’s “Women Leaders in
 8 Law,” *Daily Journal*’s “Top Women Lawyers” and “Top 75 Women Litigators,” *Benchmark*’s “Top
 9 250 Women in Litigation,” and *The American Lawyer*’s “Top 45 Women Litigators Under 45.” *Id.*

10 Mr. Teruya and QE actively promote diversity, including by staffing attorneys with diverse
 11 backgrounds and mentoring younger attorneys. For example, *in this case*, Mr. Teruya and QE asked a
 12 female, then-associate at QE, Michelle Schmit, to lead Consumers at the parties’ Rule 26(f)
 13 conference, negotiate with Facebook counsel a number of key discovery protocols, and lead
 14 Consumers’ letter briefing on these issues. Teruya Decl. ¶ 47. With Mr. Teruya’s and QE’s full
 15 support, Ms. Schmit then argued these key discovery disputes on Consumers’ behalf at May 25, 2021
 16 and August 31, 2021 hearings before Magistrate Judge DeMarchi (when Judge DeMarchi presided
 17 over discovery issues in these cases). *Id.* The next year, Ms. Schmit was promoted to partner at QE.

18 Mr. Teruya and QE have also provided early experience to other associates working on this
 19 case. Teruya Decl. ¶ 48. For example, QE associates have played key roles in drafting pleadings and
 20 briefs, leading discussions and meet-and-confers with Facebook and other counsel, managing
 21 discovery, coordinating with the Consumer Class representatives, working with experts, and other
 22 case development efforts. *See* Standing Order for Civil Cases Before Judge Donato, ¶ 13 (“The Court
 23 has a strong commitment to supporting the development of our next generation of trial lawyers.”).

24 **C. Mr. Teruya and the QE Team Will Continue to Work Respectfully,**
 25 **Cooperatively, and Professionally With Counsel of All Backgrounds**

26 Mr. Teruya and QE firmly believe in the value of collaboration and seeking to build consensus.
 27 Teruya Decl. ¶ 49. That approach is how individuals with different perspectives can share their diverse
 28 views. It also results in more informed and balanced decision-making, based on reflection and

1 consideration of everyone's views, because that is the best way to reach agreement among multiple
 2 stakeholders. Mr. Teruya has employed this framework to great success in this case—it is why various
 3 counsel have often personally asked Mr. Teruya to lead important discussions with other counsel on
 4 case management and discovery issues, including with Facebook's counsel. If appointed, Mr. Teruya
 5 and the QE team will continue to employ this collaborative framework and approach.

6 Any suggestion Mr. Teruya or others on the QE team do not respect the voices of female
 7 counsel remains completely untrue. Teruya Decl. ¶50. Although such allegations must be taken
 8 seriously so women feel comfortable raising concerns of gender bias and discrimination, the women
 9 on QE's team all strongly support Mr. Teruya and are willing to provide the Court with their views on
 10 Mr. Teruya's respect, courteousness, and professionalism. Furthermore, recognizing Mr. Teruya's
 11 friendly demeanor, collaborative nature, and utmost respect for all counsel, multiple female
 12 attorneys—who are completely unconnected to this litigation and do not work at QE, but who have
 13 worked with Mr. Teruya on other matters—have submitted declarations on his behalf. *See*
 14 Declarations of Cindy Reichline, Melissa B. Willett, Amy T. Brantly. So has Kathleen Sullivan, a QE
 15 name partner, who has worked closely with Mr. Teruya over the years. *See* Sullivan Decl.

16 To be frank, the insinuations in HB's and LGN's prior response to Mr. Teruya's motion for
 17 appointment as Co-Lead Counsel remain a mystery to him and QE. Mr. Teruya and the QE team have
 18 never discounted Ms. Scarlett's (or any other female attorney's) views on this case. They have also
 19 frequently agreed with Ms. Scarlett's decisions, and when they have disagreed, Mr. Teruya and the
 20 QE team have attempted to do so respectfully, while providing their thoughts and inviting discussion
 21 in order to make the best decision for the Class. Mr. Teruya's or the QE team's providing their views
 22 or requesting a discussion has nothing to do with gender; they are meant to ensure case tasks are
 23 completed and the firms attempt to reach consensus. Mr. Teruya's advice has been specifically
 24 requested, welcomed, and appreciated by multiple HB and LGN attorneys working on this case.

25 Mr. Teruya and the QE team have done all they can to ensure a functional and professional co-
 26 counsel relationship where every team member feels respected, including asking Ms. Scarlett to share
 27 the basis for her concerns about any lack of respect toward her. The example she raised centered
 28 around an incident that involved two other *female* attorneys at QE who Ms. Scarlett felt were not

1 sufficiently respectful of her because they disagreed with her on a discovery letter brief and attempted
 2 to reach consensus by discussing the issue; a request she derided as “really beyond belief” in a
 3 Consumer attorney-wide email, even though one of the QE attorneys in question has been practicing
 4 for 14 years and is more senior than Mr. Clark. In that and similar instances, Mr. Teruya and QE have
 5 declined to respond in kind, choosing to try to move forward productively (including through today).
 6 To the extent the Court finds it helpful, Mr. Teruya and QE can provide the Court with additional
 7 details and evidence regarding these issues *in camera*, but they believe this application stands on its
 8 own for why Mr. Teruya should be appointed Interim Lead Consumer Class Counsel.

9 The truth is that Mr. Teruya and QE have, at all times, sought to work collaboratively,
 10 respectfully, and professionally with all counsel, as is their nature. Teruya Decl. ¶ 51. After a prior
 11 contested leadership process, Judge Koh appointed QE and HB as Interim Co-Leads, and Keller
 12 Postman and LGN as the two and only members of the Consumer Executive Committee.¹ Mr. Teruya
 13 and the QE team thereafter sought to integrate HB and LGN as part of the Consumer team, and have
 14 consistently sought their cooperation and input in an effort to reach consensus, including most recently
 15 by collaboratively splitting up depositions and other tasks so that each firm can contribute. HB and
 16 LGN filed their follow-on complaint together, previously sought leadership positions jointly, give
 17 each other their “proxy” without even knowing how the other will “vote,” and now seek to deprive
 18 Mr. Teruya and QE of any meaningful say in this case. Mr. Teruya and QE respectfully submit that is
 19 neither productive, nor beneficial to the Consumer Class.

20 If appointed, Mr. Teruya unequivocally will continue to work respectfully, cooperatively, and
 21 professionally, as he and the QE team have done to date. Teruya Decl. ¶ 49.

22 **III. QE WILL MAXIMIZE EFFICIENCIES AND IMPLEMENT PROPER CONTROLS**

23 This Court has explained that important goals in appointing interim class counsel include
 24 maximizing efficiencies and ensuring “that any party seeking fees at the end of this litigation will be
 25 able to present to the Court clear and definitive records that were prepared as the fees and costs were
 26 incurred.” *Robinhood*, Dkt. 59 at 4–5. Appointing Mr. Teruya will serve these goals.

27 ¹ Keller Postman was subsequently disqualified. Since then, only QE, HB, and LGN have performed
 28 work on the Consumer Class’s behalf.

1 Litigating cases efficiently is part and parcel to QE's success in complex cases like this one.
2 For example, the Honorable Daniel Weinstein (retired from the San Francisco County Superior Court)
3 explained that in a case he mediated where QE served as co-lead class counsel: "in 30-plus years of
4 mediating high-stakes disputes, this was one of the finest examples of efficient and effective
5 lawyering by plaintiffs' counsel that I have ever witnessed." *See* Teruya Decl. ¶ 53. This case is no
6 different—QE has litigated and will continue to litigate the Consumer Class's claims as efficiently as
7 possible. QE also regularly employs other case management strategies to streamline complex cases,
8 including staffing the case leanly, eliminating redundancies by assigning discrete tasks to specific
9 team members, and altering, reducing, and ramping up staffing on cases as appropriate.

10 Mr. Teruya and the QE team are mindful of the Court's views as to committees. *Robinhood*,
11 Dkt. 65, at 2. Indeed, QE previously maintained in its prior leadership application that no formal
12 "committee" structure was necessary for the Consumer Class. *See* Dkt. 55 at 22:24–26. Mr. Teruya
13 and QE maintain that position now. Consistent with the Court's guidance in *Robinhood*, Mr. Teruya
14 and QE would delegate specific tasks to other firms, if and as needed.

15 Mr. Teruya and the QE team are also familiar with this Court's requirements regarding fees,
16 costs, expenses, and records as to the same. *See, e.g., Robinhood*, Dkt. No. 59 at 4–5. The Court's
17 requirements are consistent with QE's already-existing practices, and Mr. Teruya and the QE team
18 commit to following the Court's requirements in this regard and ensuring proper controls are in place.

19 CONCLUSION

20 Mr. Teruya and QE have repeatedly demonstrated their tremendous personal and professional
21 commitments to the Consumer Class, including developing the claims at issue and pushing them
22 forward at all stages. In recognition of Mr. Teruya's and QE's dedication to the Class, two of the
23 Consumer Class representatives have submitted declarations in support of Mr. Teruya's application.
24 *See* Declarations of Maximilian Klein and Sarah Grabert. If appointed, Mr. Teruya and QE will
25 continue to unflinchingly prioritize the Consumer Class's interests. The Court should therefore
26 appoint Kevin Y. Teruya as Interim Lead Consumer Class Counsel, so Mr. Teruya and QE can
27 continue to build upon their years of substantial work in this case in service of the Consumer Class.

1 DATED: February 3, 2023

Respectfully submitted,

2 By: /s/ Kevin Y. Teruya

3 **QUINN EMANUEL URQUHART & SULLIVAN,**
4 **LLP**

Kevin Y. Teruya (Bar No. 235916)

kevinteruya@quinnemanuel.com

5 Adam B. Wolfson (Bar No. 262125)

adamwolfson@quinnemanuel.com

6 Claire D. Hausman (Bar No. 282091)

clairehausman@quinnemanuel.com

7 Brantley I. Pepperman (Bar No. 322057)

brantleypepperman@quinnemanuel.com

8 865 South Figueroa Street, 10th Floor

Los Angeles, CA 90017-2543

9 (213) 443-3000

10 Manisha M. Sheth (admitted *pro hac vice*)

manishasheth@quinnemanuel.com

11 51 Madison Avenue, 22nd Floor

New York, New York 10010

12 (212) 849-7000

13 Michelle Schmit (admitted *pro hac vice*)

michelleschmit@quinnemanuel.com

14 191 N. Wacker Drive, Suite 2700

Chicago, IL 60606

15 Telephone: (312) 705-7400

16 *Interim Counsel for the Consumer Class*

1 **ATTESTATION OF KEVIN Y. TERUYA**

2 This document is being filed through the Electronic Case Filing (ECF) system by attorney
3 Kevin Y. Teruya. By his signature, Mr. Teruya attests that he has obtained concurrence in the filing of
4 this document from each of the attorneys identified on the caption page and in the above signature
5 block.

6 Dated: February 3, 2023

7 By /s/ Kevin Y. Teruya
 Kevin Y. Teruya

8
9 **CERTIFICATE OF SERVICE**

10 I hereby certify that on this 3rd day of February 2023, I electronically transmitted the
11 foregoing document to the Clerk's Office using the CM/ECF System, causing it to be electronically
12 served on all attorneys of record.

13
14 By /s/ Kevin Y. Teruya
 Kevin Y. Teruya